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No. 90-1467

In the Supreme Court of the United States

OCTOBER TERM, 1990

CHURCH OF SCIENTOLOGY OF CALIFORNIA, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the Anti-Injunction Act, 26 U.S.C. 7421(a), divests the courts of jurisdiction to enjoin the United States from collecting the federal employment taxes that have been assessed against petitioner.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 920 F. 2d 1481. The order of the district court denying petitioner's motion for a preliminary injunction (Pet. App. 29a-30a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 12, 1990. The petition for a writ of certiorari was filed on March 12, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1957, petitioner was granted recognition as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. Petitioner's tax-exempt status was revoked in 1967, however, because a significant portion of the earnings from its operations inured to the private benefit of its founder, L. Ron Hubbard, and to other private individuals. *Church of Scientology* v. *Commissioner*, 823 F.2d 1310 (9th Cir. 1987), cert. denied, 486 U.S. 1015 (1988). Petitoner has, nonetheless, continued to fail to pay taxes as they come due. See 823 F.2d at 1312-1313.

On March 9, 1989, the Internal Revenue Service issued a notice of proposed adjustment to petitioner for an amount in excess of $9,000,000 for Federal Insurance Contribution Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes for the years 1976 through 1986. The adjustment resulted directly from the disallowance of petitioner's claimed tax-exempt status for those years. Pet. App. 3a. On April 7, 1989, petitioner filed an administrative protest challenging the proposed adjustment. This protest and a supplemental protest filed by petitioner were rejected by the IRS. *Id.* at 3a-4a. An assessment for the additional taxes was then issued. *Ibid.*

In discussions that thereafter occurred between petitioner and two IRS employees, petitioner contends (Pet. 4-5) that it was advised that if it made a token payment of the FICA and FUTA taxes for one employee for each quarterly period in question and submitted claims for refund and abatement of those taxes, the IRS would forbear collection of the balance during the period that the claims were being considered. Petitioner asserts that these assurances of forbearance from collection were made pursuant to IRS Policy Statement P-5-16 (*reprinted in* 1 Admin. Int. Rev.

Man. (CCH) at 1305-11), which states in relevant part that:

> reasonable forbearance will be exercised with respect to collection provided (1) adjustment of the taxpayer's claims is within the control of the service, and (2) the interests of the Government will not be jeopardized.

Ibid. (quoted at Pet. App. 15a-16a).

On September 22, 1989, petitioner made a payment of FICA and FUTA taxes for one employee for each period in question and submitted claims for refund and abatement. Pet. App. 4a. IRS Revenue Officer Sandra Baker reviewed the claims for refund and abatement and determined that more than $6,500,000 of the total assessment of $9,000,000 was not contested by petitioner.[1] Pet. App. 6a. On January 5, 1990, Baker wrote petitioner's counsel and requested a list of its officers so that the IRS could make assessments of the unpaid taxes directly against petitioner's responsible officials as authorized by Section 6672 of the Code.[2] On April 4, 1990, Baker served seven notices of levy on selected banks. On April 6, 1990, the IRS mailed assessments against twenty-four individuals for the unpaid employment taxes. Pet. App. 5a.[3]

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[1] Although petitioner contended that it was not liable for any FICA taxes for 1984, 1985 or 1986 because it was a church eligible to elect not to pay the employer portion of FICA under Section 3121(w) of the Code, it did not challenge its liability for FUTA taxes for all relevant periods and for FICA taxes for the period from 1976 through 1983, though the amount of those liabilities and the applicability of penalties were in dispute. C.A. Doc. 1 (Complaint, Yingling Decl. § 7).

[2] Section 6672 provides in pertinent part that "Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect [any] such tax, * * * or willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall * * * be liable [for] a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over." 26 U.S.C. 6672(a).

[3] In an affidavit filed with the court, Baker has set forth the factual basis for each levy and the method of determining the identities of the individuals against whom the assessments were issued. Pet. App. 6a.

2. Petitioner then commenced this action to enjoin the government from collecting the taxes that had been assessed. The district court initially granted an ex parte temporary restraining order but, after a hearing, vacated that order and denied petitioner's request for a preliminary injunction. The court held (Pet. App. 29a) that it lacked jurisdiction to enjoin the collection of taxes under the Anti-Injunction Act, 26 U.S.C. 7421(a), which provides in relevant part that:

> no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person * * *.

The court of appeals affirmed, holding that the requested injunctive relief was barred by the Anti-Injunction Act. Pet. App. 1a-26a. The court noted that there is a "single, narrow judicial exception to the Anti-Injunction Act" that has been recognized by this Court's decisions (Pet. App. 10a):

> [A]n injunction may be obtained against the collection of any tax if (1) it is 'clear that under no circumstances could the government ultimately prevail' and (2) 'equity jurisdiction' otherwise exists, i.e., the taxpayer shows that he would otherwise suffer irreparable injury.

Ibid. (quoting *Commissioner* v. *Shapiro*, 424 U.S. 614, 627 (1976) (quoting *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962))). The court of appeals found nothing in the facts of this case to support petitioner's claim that the government had firmly bound itself to an indefinite suspension of collection activities. Neither Policy Statement P-5-16, nor the alleged statements of the IRS employees that the Policy would be followed, contained such concrete, unlimited assurances. Pet. App. 15a-17a. Moreover, the fact that more than $6,500,000 of the taxes that had been assessed were not in dispute quite evidently provided the government with a proper basis for proceeding to immediate collection. See *id.* at 16a. The court concluded that, "[v]iewing

the facts and the law in the most liberal light as required by *Williams Packing*, the Church has failed to demonstrate that the Government cannot succeed on its claim." *Id.* at 15a.

The court of appeals also rejected petitioner's contention that it faced irreparable injury to interests protected by the Free Exercise and Due Process Clause, noting that this Court has held that "the constitutional nature of a taxpayer's claim, as distinct from its probability of success, is of no consequence under the Anti-Injunction Act." Pet. App. 19a (quoting *Alexander* v. *"Americans United" Inc.*, 416 U.S. 752, 759 (1974)). The court concluded that, on the facts of this case, "the opportunity to sue for a refund is an adequate remedy at law which bars the granting of an injunction." Pet. App. 21a.[4]

ARGUMENT

The court of appeals correctly rejected petitioner's request to enjoin the government from collecting taxes. The decision of the court of appeals does not conflict with the decisions of this Court or with the decisions of any other court of appeals. Further review by this Court is therefore not warranted.

1. The Anti-Injunction Act provides, with exceptions that are not relevant to this case, that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." 26 U.S.C. 7421(a). The principal purpose of the Anti-Injunction Act is to preserve the government's ability to assess and collect

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[4] The court also held (Pet. App. 22a-23a) that no injunction would issue to prevent any unauthorized disclosure of confidential return information because petitioner had an adequate remedy at law for any violation in the form of an action for damages under Section 7431(a) of the Code. This issue is not raised in the petition. See Pet. i.

taxes expeditiously with "a minimum of preenforcement judicial interference" and "to require that the legal right to the disputed sums be determined in a suit for refund." *Bob Jones University* v. *Simon*, 416 U.S. 725, 736 (1974). The Act has been broadly construed to deprive the courts of jurisdiction to enjoin any aspect of IRS activity culminating in the assessment or collection of federal taxes. *Id.* at 738-739; *Blech* v. *United States*, 595 F.2d 462, 466 (9th Cir. 1979). A suit that falls within the Act's proscription is to be dismissed for lack of subject matter jurisdiction. See *Alexander* v. *"Americans United" Inc.*, 416 U.S. 752, 757-758 (1974).

This Court has articulated a single, narrow judicial exception to the Anti-Injunction Act. Under this Court's *Williams Packing* test, an injunction may issue only when it is "clear that the Government could in no circumstances ultimately prevail on the merits" of its claim and that "equity jurisdiction" otherwise exists. *United States* v. *American Friends Service Committee*, 419 U.S. 7, 10 (1974). See *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. at 7. To satisfy the first prong of the *Williams Packing* test, the taxpayer must demonstrate that "under the most liberal view of the law and the facts, * * * the United States cannot establish its claim." *Ibid.* A showing that "the collecting officers have made the assessment, and claim that it is valid," thus generally suffices to defeat a claim for injunctive relief. *Id.* at 8. To meet the second prong of the *Williams Packing* test, the taxpayer must demonstrate that there are "special circumstances attending a threatened injury * * * bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked." *Dows* v. *City of Chicago*, 78 U.S. (11 Wall.) 108, 109-110 (1870); see *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. at 6. Before an injunction will issue, the taxpayer must therefore show that it will suffer

irreparable injury and that it has no adequate remedy at law. *Ibid.*

2. The court of appeals correctly applied this Court's decisions in concluding (Pet. App. 13a-15a) that petitioner failed to demonstrate that the government's claim for taxes was "without foundation" (370 U.S. at 8) and that petitioner therefore failed to satisfy the first prong of the *Williams Packing* test. Not only did petitioner fail to show that the assessment was invalid, it also failed to establish that the attempts to collect the taxes were improper. As the court of appeals pointed out, the Policy Statement upon which petitioner relies indicates that, with respect to taxes that have been placed in reasonable dispute by a claim for refund and abatement, "reasonable forbearance" will occur, but only for so long as "the interests of the Government will not be jeopardized." Pet. App. 15a-16a. Since more than $6,500,000 of the taxes assessed against petitioner had not been disputed, there was nothing to suggest that taking action to collect those outstanding undisputed assessments in any manner contravened the IRS Policy Statement. *Id.* at 16a-17a. Petitioner's reliance (Pet. 27-28) on *United States ex rel. Accardi* v. *Shaughnessy*, 347 U.S. 260 (1954), which requires an agency to adhere to its own regulations, is thus misplaced. Pet. App. 17a. Viewing this matter in the light most favorable to the government, "it cannot be said that there is no possibility that the Government will prevail on this issue." *Ibid.*

Indeed, petitioner does not now assert that it has met its burden of establishing that the government could not ultimately prevail on the merits of the assessment. Instead, petitioner argues that IRS personnel were acting in "bad faith" by attempting to collect the taxes after assuring petitioner that the IRS would forbear collection activities while the claim for refund was pending. Petitioner further asserts

(Pet. 13-22) that it is entitled to an injunction to prevent IRS employees from proceeding in "bad faith."

Petitioner has misinterpreted this Court's decisions in *Williams Packing* and *Bob Jones University* in asserting (Pet. 10-11) that a showing that the government is acting in "good faith" in collecting the tax is a "fundamental requirement" to application of the Anti-Injunction Act. In *Williams Packing*, this Court simply observed that the government's actions *are* in "good faith" whenever it is asserting a tax claim that is not "without foundation." 370 U.S. at 8. See also *Bob Jones University* v. *Simon*, 416 U.S. at 737.[5] The record of this case clearly reflects that the taxes that have been assessed are not "without foundation." See Pet. App. 6a; notes 1, 3, *supra*. This is sufficient to establish that the government is acting in "good faith." See *Enochs* v. *Williams Packing Co.*, 370 U.S. at 7-8.

Moreover, IRS Policy Statement P-5-16 calls for forbearance from collection only where a refund claim has cast doubt on the validity of the assessment, and even then only if the "interests of the Government will not be

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[5] In *United States* v. *LaSalle National Bank*, 437 U.S. 298 (1978), the Court refused to look to the subjective motives of an IRS agent in determining whether an administrative summons had been issued in "good faith," as required by *United States* v. *Powell*, 379 U.S. 48, 57-58 (1964). Rather, the Court held that the "good faith" determination is to be made through an examination of the institutional posture of the IRS, and that any inquiry into the subjective state of mind of individual agents would be improper and unnecessary. 437 U.S. at 316. A similar institutional focus on the exception to the Anti-Injunction Act is also proper. The appropriateness of a tax assessment and the manner and means by which it is collected are institutional decisions the validity of which do not turn on the actions of a single collection agent. Delving into the subjective motives of an agent would be as "undesirable and unrewarding" here as this Court found them to be in summons enforcement cases. *United States* v. *LaSalle National Bank*, 437 U.S. at 316.

jeopardized." See 1 Admin. Int. Rev. Man. (CCH) at 1305-1311. By its terms, the Policy Statement thus indicates that collection efforts will *not* be abated if it is deemed to be in the government's interest to pursue them. The Policy Statement, moreover, has no application to the collection of the $6,500,000 in taxes and interest (attributable to uncontested FUTA taxes and FICA taxes for periods prior to 1984) that were not in dispute.[6]

3. The court of appeals also correctly held that petitioner's allegations fell short of establishing the remaining prerequisites to equitable relief—in particular, that petitioner would suffer irreparable harm in the absence of an injunction and that there is no adequate remedy at law. This Court has held that it is "unmistakably clear that the constitutional nature of a taxpayer's claim, as distinct from its probability of success, is of no consequence under the Anti-Injunction Act." *Alexander* v. *"Americans United" Inc.*, 416 U.S. at 759. Notably, this Court has refused to enjoin tax

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[6] The court of appeals correctly distinguished cases cited by petitioner where injunctive relief issued based on proof of coercion or fraud by IRS agents because petitioner had "not demonstrated how the representation that the IRS would temporarily forbear collecting disputed deficiencies coerced or defrauded [petitioner] in any manner" (Pet App. 14a). The taxpayer in *Mitsukiyo Yoshimura* v. *Alsup*, 167 F.2d 104, 105 (9th Cir. 1948) (Pet. 18), was coerced into signing incriminating documents and falsely threatened with internment. As noted by the court of appeals (Pet App. 14a), "[n]o showing of similar misconduct appears in the record." And in *Miller* v. *Standard Nut Margarine Co.*, 284 U.S. 498 (1932) (Pet. 19), the taxpayer commenced its business acting in reliance upon assurances from the Commissioner of Internal Revenue of the nontaxable nature of its product. The court of appeals correctly found the circumstances here to be readily distinguishable, since "[n]o showing has been made that the IRS assured [petitioner] that no taxes were owing" or "that [petitioner] relied on the claimed assurance to its detriment" (Pet. App. 15a).

collection activity despite the complaint that irreparable injury to religious and due process rights would result, holding that a suit for refund of the tax is an adequate remedy at law. *Bob Jones University* v. *Simon*, 416 U.S. at 746; *United States* v. *American Friends Service Committee*, 419 U.S. at 11. The court of appeals therefore correctly concluded (Pet. App. 19a) that the "financial hardship" petitioner claims it will endure from the collection of taxes, and the asserted effect that such "hardship" could have on petitioner's exercise of its allegedly protected activities, are not a sufficient basis for equitable relief under the Anti-Injunction Act.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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